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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,186	07/22/2003	Beth A. Lange	KCC 4929 (K-C 18,622)	6849
321	7590	12/21/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			MCCORMICK EWOLDT, SUSAN BETH	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,186

Applicant(s)

LANGE ET AL.

Examiner

Susan B. McCormick-Ewoldt

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 3, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-102 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a product for promoting the adherence of *Lactobacillus acidophilus* to the surface of the skin, classified in class 424, subclass 93.45, subclass 443 or subclass 725, for example.
- II. Claims 12-19, drawn to a product for promoting the adherence of *Staphylococcus epidermidis* to the surface of the skin, classified in class 424, subclass 93.42, subclass 237.1 or subclass 725, for example.
- III. Claims 20-29, drawn to a product for inhibiting the adherence of *Candida albicans* to the surface of the skin, classified in class 424, subclass 443, subclass 93.51 or subclass 725, for example.
- IV. Claims 30-39, drawn to a product for inhibiting the adherence of *Proteus mirabilis* to the surface of the skin, classified in class 424, subclass 443 or subclass 725, for example.
- V. Claims 40-47, drawn to a product for inhibiting the adherence of *Pseudomonas aeruginosa* to the surface of the skin, classified in class 424, subclass 170.1, subclass 93.47, subclass 443 or subclass 725, for example.
- VI. Claims 48-56, drawn to a product for inhibiting the adherence of *Staphylococcus epidermidis* to the surface of the skin, classified in class 424, subclass 443, subclass 93.42, subclass 237.1 or subclass 725, for example.
- VII. Claims 57-64, drawn to a product for inhibiting the growth of *Candida albicans* on or around the surface of the skin, classified in class 424, subclass 443 or subclass 93.51, for example.
- VIII. Claims 65-71, drawn to a product for inhibiting the growth of *Proteus mirabilis* on or around the surface of the skin, classified in class 424, subclass 443, for example.
- IX. Claims 73-80, drawn to a product for inhibiting the growth of *Pseudomonas aeruginosa* on or around the surface of the skin, classified in class 424, subclass 443, subclass 170.1 or subclass 93.47, for example.
- X. Claims 81-89, drawn to a product for inhibiting the growth of *Staphylococcus epidermidis* on or around the surface of the skin, classified in class 424, subclass 443, subclass 237.1 or subclass 93.42, for example.
- XI. Claims 90-102, drawn to a product for selectively controlling the balance of flora on the skin, classified in class 424, subclass 443, for example.

Inventions I thru XI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are patentably distinct because each group has different constituents that require a separate search.

Art Unit: 1654

The several inventions above are independent and distinct, each from the other. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference that would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Election of Species

This application contains claims directed to the following patentably distinct species of the claimed invention: active ingredients in a botanical composition.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 4-7, 15-16, 24-26, 34-36, 43-44, 51-52, 60-61, 68, 76-77, 84-85 are generic.

Claims 1, 5 and 8 are generic to a plurality of disclosed patentably distinct species comprising an active ingredient as claimed. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, (i.e. elect one composition, i.e. as in a botanical compound from Aloe Ferox HS or Ginseng or Calendula, etc. or a particular botanical mixture, for example) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant should select one of the bacterium listed or a specific combination thereof *Lactobacillus acidophilus*, *Candida albicans*, *Proteus mirabilis*, *Staphylococcus epidermidis*, *Pseudomonas aeruginosa* of these listed. Currently, 4-7, 15-16, 24-26, 34-36, 43-44, 51-52, 60-61, 68, 76-77, 84-85 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, Applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 1654


Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme


PATRICIA LEITH
PRIMARY EXAMINER